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Part IV—Proceedings of the Madras Legislature

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Bill to be introduced in the Legislative Council / Assembly of the Province of Madras.

Under the proviso to rule 73 of the Madras Council / Assembly Rules, the following Bill, together with the Statement of Objects and Reasons, is published for general information:—

A Bill to provide for the relief of indebted agriculturists in the Province of Madras.

WHEREAS it is expedient to provide for the relief of indebted agriculturists in the Province of Madras; It is hereby enacted as follows:—

1. This Act may be called the Madras Agriculturists Relief Act, 1938. Short title.

2. It extends to the whole of the Province of Madras. Extent.

3. In this Act, unless there is anything repugnant in the subject or context,

(i) 'person' means an individual and includes an undivided Hindu family, a Malabar tarwad or tavazhi and an aliyasantana family, but does not include a body corporate, a charitable or religious institution or an unincorporated company or association;

(ii) 'agriculturist' means a person who—

(*a*) has a saleable interest in any agricultural or horticultural land in the Province of Madras, not being land situated within a municipality or cantonment, which is assessed by the Provincial Government to land revenue which shall be deemed to include peshkash and quit-rent, or

(*b*) holds an interest in such land under a landholder under the Madras Estates Land Act, 1908, as tenant, ryot or under-tenure holder; or Madras Act I of 1908.

(*c*) holds an interest in such land, recognized in the Malabar Tenancy Act, 1929; or Madras Act XIV of 19

(*d*) holds a lease of such land from any person specified in sub-clause (*a*), (*b*) or (*c*):

Provided that a person shall not be deemed to be an 'agriculturist' if he—

(A) has within any of the three financial years ending 31st March 1938 been assessed to income-tax under the Indian Income-tax Act, 1922, or under the income-tax laws of any Indian State; or Act XI of 1922.

(B) has within the two financial years ending 31st March 1938 been assessed to profession-tax of more than eight annas in respect of any half year or of more than one rupee in respect of any year, under the Madras District Municipalities Act, Madras A V of 1920.

1920, the Madras Local Boards Act, Madras Ac XIV of 19

1920, the Madras City Municipal Act, Madras Ac IV of 19

1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in Act II of 1924.

any other province in British India, any Indian State or any foreign State in India; or

(C) has within the two financial years ending 31st March 1938, been assessed to property or house tax in respect of buildings or lands other than agricultural lands, under the provisions of the Madras District Municipalities Act, 1920, the Madras Local Boards Act, 1920, the Madras City Municipal Act, 1919, the Cantonments Act, 1924, or any law governing municipal or local bodies in any other province in British India or any Indian State, provided that the aggregate annual rental value of such buildings and lands, whether let out or in the occupation of the owner, is not less than Rs. 600; or

Madras Act V of 1920.
Madras Act XIV of 1920.
Madras Act IV of 1919.
Act II of 1924

(D) is a landholder under the Madras Estates Land Act, 1908, who pays any sum exceeding Rs. 500 as peshkash or exceeding Rs. 100 as quit-rent, jodi, kattubadi, poruppu or the like, or a janmi under the Malabar Tenancy Act, 1929, who pays any sum exceeding Rs. 500 as land revenue to the Provincial Government.

Madras Act I of 1908

Madras Act XIV of 1930.

Explanation —The annual rental value of any building or land for the purposes of proviso (C) shall—

(1) where the assessment is based on the annual rental value, be deemed to be such value;

(2) where the assessment is based on the capital value, be deemed to be five per cent of the capital value; and

(3) in any other case, be deemed to be the value ascertained in the prescribed manner;

(iii) 'debt' means any liability in cash or kind, whether secured or unsecured, due from an agriculturist, whether payable under a decree

or order of a civil or revenue court or otherwise, but does not include rent as defined in clause (iv); and

(iv) 'rent' means rent as defined by the Madras Estates Land Act, 1908, or by the Malabar Tenancy Act, 1929, or quit-rent, jndi, kattubadi, poruppu or the like, payable to the landholder of an estate as defined by the Madras Estates Land Act, 1908, by grantees of land therein, and includes interest payable thereon and costs incurred in respect of the recovery thereof through a civil or revenue court.

Madras Act I of 1908. Madras Act XIV of 1929. Madras Act I of 1908.

Certain debts and liabilities not to be affected.

4. Nothing in this Act shall affect debts and liabilities of an agriculturist falling under the following heads:—

(a) any revenue, tax or cess payable to the Provincial Government or any other sum due to them, by way of loan or otherwise;

(b) any revenue, tax or cess payable to the Central Government or any other sum due to them, by way of loan or otherwise;

(c) any tax or cess payable to any local authority or any other sum due to them, by way of loan or otherwise;

(d) any debt contracted on the security of house property only in a municipality, cantonment, or a panchayat which was a union before the 26th August 1930;

(e) any liability in respect of any sum due to any co-operative society, including a land mortgage bank, registered or deemed to be registered under the Madras Co-operative Societies Act, 1932;

Madras Act VI of 1932.

(f) any liability in respect of any sum due to any company registered under the Indian Companies Act, 1913, or formed in pursuance of an Act of Parliament or any Indian Law or a Royal Charter or Letters Patent, or registered in an Indian State:

Act VII of 1913.

Provided, that in the case of companies registered under the Indian Companies Act, 1913, or any other Indian Law or registered in an

Act VII of 1913.

Indian State, the number of members on the register of shareholders of such company on the 1st October 1937 was 500 or more,

(*g*) any liability arising out of a breach of trust;

(*h*) any liability in respect of maintenance whether under decree of court or otherwise:

Provided that where the liabilities mentioned in clauses (*e*) and (*f*) arise by reason of an assignment to the co-operative society or company, such assignment has taken place before the 1st October 1937 or is an assignment of a loan granted by such a co-operative society or company as is mentioned in clauses (*e*) and (*f*).

Special Provision for undivided Hindu families, etc.

5. Where an undivided Hindu family, Malabar tarwad or tavazhi or aliyasantana family is assessed to the taxes specified in provisos (A), (B) and (C) to section 3 (ii), or falls within the category of persons specified in proviso (D) to the same section, no person who was a member of the family on the 1st October 1937 shall be deemed to be an agriculturist for the purposes of this Act except section 11

Sons and descendants of non-agriculturist members of Hindu families to be non agriculturists.

6. Where in an undivided Hindu family, which is an " agriculturist " within the meaning of section 3 (ii) any member of the family is not an agriculturist, then, notwithstanding anything contained in section 3 (ii), none of his sons and descendants in the male line shall be deemed to be an agriculturist for the purposes of sections 7 to 10 and 13 to 21 of this Act.

Separation of share of debt in particular cases.

7. Notwithstanding anything contained in section 3 (ii) and subject to the provisions of sections 5 and 6, where in a Hindu family, whether divided or undivided, some of the members liable in respect of a family debt are not agriculturists while others are agriculturists, the creditor shall, notwithstanding any law to the contrary, be entitled to proceed—

(*a*) against the non agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt; and

(*b*) against the agriculturist member or members and his or their share of the family property, to the extent only of his or their proportionate share of the debt which shall be scaled down in accordance with the provisions of this Act.

Scaling down of debts of agriculturists.

8. (1) All interest outstanding on the 1st October 1937, in favour of any creditor of an agriculturist whether the same be payable under law, custom or contract or under a decree of court and whether the debt or other obligation has ripened into a decree or not, shall be deemed to be discharged, and only the principal or such portion thereof as may be outstanding shall be deemed to be the amount repayable by the agriculturist on that date:

Provided that, subject to the provisions of sub-sections (2) and (3) of this section and of sections 16, 17, 18 and 19, no appropriation for principal or interest made before the 1st October 1937 shall be reopened after this Act comes into force.

(2) In cases where any debt of an agriculturist bore simple interest at a rate higher than 9 per cent per annum or compound interest and the agriculturist has paid to the creditor twice the amount of the principal of the loan, whether by way of principal or interest before the 1st October 1937, all amounts outstanding in respect of such debt including the principal, shall be deemed to be discharged.

Provided that nothing herein contained shall affect any mortgage which is a usufructuary mortgage within the meaning of section 58 (*d*) of the Transfer of Property Act, 1882, where no rate of IV of 1882 interest is specified as due to the mortgagee.

Explanation.—This sub-section shall also apply to any case where there is a stipulation for payment in any contingency of simple interest at a rate higher than 9 per cent per annum, of compound interest or of interest on interest.

(3) In the case of debts falling under sub-section (2) and not falling under the proviso thereto, where the sums repaid by way of principal or interest fall short of twice the amount of the principal, such amount as would make up this shortage, or the principal amount alone, whichever is smaller, shall be repayable.

(4) Nothing contained in sub-sections (1), (2) and (3) shall be deemed to require the creditor to refund any sum which has been paid to him, before the commencement of this Act.

(5) The provisions of this section shall not apply to any person who, though an agriculturist as defined in section 3 (ii), did not on the 1st October 1937, hold an interest in, or a lease of, any land as specified in that section.

Explanation (1).—Where the liability under a mortgage, promissory note, bond, decree or other obligation is renewed or included in a fresh document in favour of the same creditor, the principal originally advanced by the creditor together with such sums, if any, as have been subsequently advanced as principal shall alone be treated as the principal sum repayable by the agriculturist under this section

Explanation (2).—Where a mortgage, promissory note, bond, decree or other obligation is claimed by a creditor by reason of an assignment in his favour, the principal sum shall be deemed to be the sum advanced to the debtor at the inception of the transaction unless it is proved that the assignment was taken at the instance of the debtor, in which case the amount paid by the assignee for the assignment shall be treated as the principal sum due to the assignee.

Provision as to costs in certain cases.

9. Where a debt payable by an agriculturist includes any sum decreed as costs by any Court, or sums lawfully expended by a mortgagee or other person in order to preserve the property mortgaged, such sum or sums shall be recoverable in addition to the sum recoverable under the provisions of section 8:

Provided that where a decree has been obtained against an agriculturist in a suit filed on or after the 1st October 1937, the Court shall allow only such costs as would have been allowable if the suit had been filed for the amount of the debt as scaled down in accordance with the provisions of this Act, and where in any such case a decree has been passed before the commencement of this Act, the Court shall, on application by the agriculturist, amend the decree accordingly.

Nothing in the foregoing proviso shall apply to any suit instituted on or after the 1st October 1937 and before the commencement of this Act in respect of a claim which would be barred by limitation before the 1st April 1938.

Rate of interest payable by agriculturists on old loans.

10. All debts which have been scaled down under the provisions of this Act shall, so far as any sum remains payable thereunder, carry from the 1st October 1937 interest at the rate previously applicable under contract, custom or otherwise:

Provided that it shall not in any case exceed 6 per cent per annum simple interest.

Rate of interest payable by agriculturists on new loans.

11. No debt incurred by an agriculturist shall, after the commencement of this Act, bear interest at a rate higher than 6 per cent per annum, simple interest:

Provided that the Provincial Government may, by notification in the Official Gazette, alter and fix any other rate of interest from time to time.

Conditional discharge of arrears of rent due to certain landholders.

12. All rent payable by an agriculturist to a landholder or an under-tenure holder under the Madras Estates Land Act, 1908, or to a janmi or intermediary under the Malabar Tenancy Act, 1929, which has accrued for the fasli year 1345 and prior faslis and which is outstanding on the date of the commencement of this Act shall be deemed to be discharged whether the rent be due as such or whether a decree has been obtained therefor:

Madras Act I of 1908.

Madras Act XIV of 1930.

Provided that where the ryot or tenant does not, within fifteen months after the coming into force of this Act, pay up all arrears of rent accrued for faslis 1346 and 1347, the arrears of rent for fasli 1345 and prior faslis which were outstanding on the date of the commencement of this Act shall be deemed to be discharged in the same proportion as the rent due for faslis 1346 and 1347 which is paid up by the ryot or tenant bears to the rent due for those two faslis.

Explanation.—In cases governed by the Malabar Tenancy Act, 1929, any reference to a fasli year shall be deemed to be a reference to the agricultural year containing the greater part of the fasli year.

Madras Act XIV of 1930.

Illustrations.—(a) A tenant is in arrear at the commencement of this Act in respect of rent for fasli 1345 and prior faslis in the sum of Rs. 500 and is in arrear on that date in respect of rent for faslis 1346 and 1347 in the sum of Rs. 200. Within a period of 15 months the ryot or tenant pays the landlord a sum of Rs. 200. The arrears of rent of Rs. 500 which were

outstanding at the commencement of this Act will also be deemed to be discharged.

(*b*) A sum of Rs. 500 representing the arrears of rent for fasli 1345 and prior faslis and a sum of Rs 200 representing the arrears of rent for faslis 1346 and 1347 are in arrear and outstanding at the commencement of this Act. The ryot or tenant pays the landlord within 15 months after the commencement of this Act a sum of Rs. 100. Only a sum of Rs. 250 or one half of the rent of faslis prior to and inclusive of fasli 1345 will be deemed to be discharged.

Amendment of certain decrees.

13. Every court which passed a decree, shall, on the application of any judgment-debtor who is an agriculturist, apply the provisions of this Act to such decree and shall, notwithstanding anything contained in the Code of Civil Procedure 1908, amend the decree accordingly or enter full satisfaction, as the case may be:

Provided that all payments made or amounts recovered, whether before or after the commencement of this Act, in respect of any such decree shall first be applied in payment of all costs as originally decreed to the creditor.

Stay of execution proceedings.

14. Every court executing a decree passed against a person entitled to the benefits of this Act, shall on application, stay the proceedings until the court which passed the decree has amended the same or entered full satisfaction, as the case may be, in accordance with the provisions of section 13:

Provided that where within 60 days after the application for stay has been granted no judgment-debtor applies to the court which passed the decree for relief under section 13 or where an application has been so made and is rejected, the decree shall be executed as it stands, notwithstanding anything contained in this Act to the contrary:

Explanation.—The expression "the court which passed the decree" shall have the same meaning as in the Code of Civil Procedure, 1908.

Adjudication in insolvency.

15. Nothing contained in this Act shall apply to the debts payable by any person who has been adjudicated an insolvent prior to the coming into force of this Act:

Provided that the adjudication has not been annulled before or after the commencement of this Act.

Special provision for certain sales of movable property

16. Where, in execution of any decree, any movable property of an agriculturist has been sold on or after the 1st October 1937, then, notwithstanding anything contained in the proviso to sub-section (1) of section 8, any judgment-debtor may apply to the court for an order that the provisions of sections 8, 9 and 10 be applied to the decree, and the court, shall, if satisfied that the applicant is an agriculturist entitled to the benefits of those sections, apply the same and order the decree-holder to refund any sum received by him on or after the 1st October 1937 in excess of the amount to which he would have been entitled if the property had not been sold:

Provided that no such order shall be made without notice to the decree-holder and without affording him an opportunity to be heard in the matter.

Sales of immovable property, to be set aside in certain cases.

17. Where in execution of any decree any immovable property, in which an agriculturist had an interest, has been sold on or after the 1st October 1937, then, notwithstanding anything contained in the Indian Limitation Act, 1908, or in the Code of Civil Procedure, 1908, and notwithstanding that the sale has been confirmed, any judgment debtor, claiming to be an agriculturist entitled to the benefits of this Act, may apply to the court within 90 days of the commencement of this Act to set aside the sale of the property, and the court shall, if satisfied that the applicant is an agriculturist entitled to the benefits of this Act, order the sale to be set aside: Act IX 1908. Act V 1908.

Provided that no such order shall be made without notice to the decree-holder, the auction purchaser, and other persons interested in such sale and without affording them an opportunity to be heard in the matter.

Consequential provisions on setting aside of sale.

18. Where a sale is set aside under the preceding section, a purchaser who is himself not the executing decree-holder shall be entitled to an order for repayment of his purchase money against the person to whom it has been paid:

Provided that no poundage shall be payable in respect of any such sale and provided further that where

poundage has been collected the court shall direct the same to be refunded.

Alienations by debtor.

19. All alienations of immovable property made by an agriculturist debtor on or after the 1st October 1937 shall be invalid as against every creditor whose sale in execution has been set aside under section 17 or who became entitled to rateable distribution of the proceeds of such sale under section 73 of the Code of Civil Procedure, 1908.

Act V of 1908.

District Collector to furnish information as to certain facts.

20. Any creditor may apply to the Collector of the district in which the creditor believes his debtor to have been or to be assessed to income-tax in terms of proviso (A) to section 3 (ii) or to profession, property or house tax under the Cantonments Act, 1924, in terms of provisos (B) and (C) to that section, for information as to the above facts and the Collector shall thereupon ascertain such information and grant to such creditor a memorandum in the prescribed form as to whether the debtor has been so assessed to income-tax or to profession, property or house tax. Such memorandum shall be received in every court as evidence of the facts stated therein.

Act II of 24.

Executive authorities of local bodies to furnish information as to certain facts.

21. Any creditor may apply to the executive authority of a municipality, the president of a local board or the Revenue Officer of the Corporation of Madras for information as to whether his debtor was or is assessed to profession, property or house tax in terms of provisos (B) and (C) to section 3 (ii), and the executive authority, president or Revenue Officer shall thereupon grant to such creditor a certificate in the prescribed form as to whether the debtor named in the application has been so assessed to profession, property or house tax. Such certificate shall be received in every court as evidence of the facts stated therein.

Power to make rules.

22. (1) The Provincial Government may make rules for carrying into effect the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(*a*) in regard to any matter which is required to be prescribed by this Act;

(*b*) prescribing the form of, and the fees to be paid in respect of, applications under this Act; and

(*c*) for removing any difficulty in giving effect to the provisions of this Act.

(3) All rules made under this section shall be published in the Official Gazette and upon such publication shall have effect as if enacted in this Act.

STATEMENT OF OBJECTS AND REASONS.

The object of the Bill is to rehabilitate agriculture which is the basic industry of this Province. Directly or indirectly, the prosperity of all sections of the people is dependent upon the economic well-being of the agriculturist. His present deplorable plight is well known. While, on the one hand, his income has diminished, on the other, the interest upon his debt has been steadily accumulating, often at an unconscionable rate. The predominant feature of the distress is due to the burden of debt. It is the duty of any modern Government which is alive to its responsibilities to the people to relieve the producers of the people's food from such an intolerable burden. It would not be right for the State to permit the hereditary skill of the agriculturist to pass into unemployment, allowing land to fall into the hands of people who are strangers to the calling of agriculture. Conciliation and other voluntary methods have failed and the adoption of the principle of compulsion has become necessary.

The Bill provides that payment of the outstanding principal should discharge the debt. Interest will run from 1st October 1937 at a rate not exceeding 6 per cent per annum. In cases where high rates of interest are charged, payment of twice the principal is to have the effect of completely discharging the debtor from further liability. As far as possible, persons following occupations other than agriculture have been excluded from the benefit of the Bill. Dues to Government and local bodies and to co-operative and certain joint-stock banks have also been excluded from its scope. Every endeavour has been made in drafting the Bill to simplify the issues and make them easy of decision, thus minimising litigation.

The Bill also provides for the relief of tenants from the burden of old arrears of rent without encouraging default in the payment of current dues.

Numerous complaints have been received that owing to the expectation of legislation on these lines, creditors have had recourse to coercive processes causing great distress among agriculturists, and it is therefore proposed to give the benefit of the measure to debtors proceeded against since 1st October 1937.

(By order of His Excellency the Governor)

P. APPU NAIR,
Secretary to Government, Legal Department.

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